

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: 3/29/10

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WEN LIU,

:

Plaintiff,

:

09 Civ. 9663 (RJS) (AJP)

-against-

:

**REPORT AND RECOMMENDATION**

MOUNT SINAI SCHOOL OF MEDICINE, et al.,

:

Defendants.

:

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**ANDREW J. PECK, United States Magistrate Judge:**

**To the Honorable Richard J. Sullivan, United States District Judge:**

Plaintiff's complaint in this action was filed as of November 20, 2009. (Dkt. No. 2:  
Compl.)

Rule 4(m) of the Federal Rules of Civil Procedure provides:

*Time Limit for Service.* If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. . . .

By Order dated January 4, 2010, I advised plaintiff that if the complaint was not properly served under Rule 4(m), that is, by March 22, 2010, I would recommend that the action be

dismissed. (Dkt. No. 5.) I also directed plaintiff to provide my chambers with proof of service when made. (Id.)<sup>1/</sup>

Plaintiff has not provided my chambers with proof of service on defendants, and a review of the Court's docket sheet for this action discloses that there is no affidavit of service on file with the Clerk's Office. The United States Marshal's Office has informed my chambers that they have not received any papers from plaintiff for service.

More than 120 days having passed from the filing of the complaint, and the Court having advised plaintiff of his obligations under Fed. R. Civ. P. 4(m), and plaintiff's time to serve having expired with no action by plaintiff, and there being no indication that plaintiff has had the complaint served on defendants, I recommend that the Court dismiss plaintiff's complaint without prejudice for failure to timely serve it pursuant to Fed. R. Civ. P. 4(m). See, e.g., Thompson v. Maldonado, 309 F.3d 107, 110 (2d Cir. 2002).

#### **FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION**

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections (and any responses to objections) shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable Richard J. Sullivan, 500 Pearl Street, Room 640, and to my chambers, 500 Pearl Street, Room 1370. Any requests for an extension of time for filing objections must be directed to Judge Sullivan (with

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<sup>1/</sup> Plaintiff signed the postal return receipt for that Order on January 7, 2010.

a courtesy copy to my chambers). Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140, 106 S. Ct. 466 (1985); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993), cert. denied, 513 U.S. 822, 115 S. Ct. 86 (1994); Roldan v. Racette, 984 F.2d 85, 89 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir.), cert. denied, 506 U.S. 1038, 113 S. Ct. 825 (1992); Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989); Wesolek v. Canadair Ltd., 838 F.2d 55, 57-59 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 (2d Cir. 1983); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72.

Dated: New York, New York  
March 29, 2010

Respectfully submitted,



**Andrew J. Peck**  
United States Magistrate Judge

Copies to: Wen Liu (Regular & Certified Mail)  
Judge Richard J. Sullivan